

**REPORT - PLANNING COMMISSION MEETING  
November 20, 2003**

**Project Name and Number:** Mowry Avenue Condominiums (PLN2003-00253)

**Applicant:** John J. Dutra

**Proposal:** To consider Tentative Tract Map 7479 and a Planned District Minor Amendment to P-2001-174 to allow architectural modifications to a previously approved condominium project for the purposes of adding a third bedroom to the second-story two-bedroom units.

**Recommended Action:** Approve, subject to conditions

**Location:** 1481 Mowry Avenue, Centerville Planning Area

**Assessor Parcel Number(s):** 501-1560-007-05

**Area:** 0.61 Acres

**Owner:** Dutra Enterprises, Inc.

**Agent of Applicant:** John J. Dutra, President, Dutra Enterprises, Inc.

**Consultant(s):** Michael Stanton, Architect  
KPFF Consulting Engineers, Structural Engineer  
Landtech Consultants, Civil Engineer  
Prime Design Group, Electrical Engineer  
List Engineering, Mechanical/Plumbing Engineer  
ANLA Inc., Landscape Architect

**Environmental Review:** An Environmental Impact Report was previously prepared and certified for the project.

**Existing General Plan:** Medium Density Residential (18-23 Dwelling Units per Acre)

**Existing Zoning:** P-2001-174, Residential Planned District

**Existing Land Use:** Vacant (Previously Santos Barn and one residence were located on the lot)

**Public Hearing Notice:** Public hearing notification is applicable. A total of 406 notices were mailed to owners and occupants of property within 300 feet of the site on the following streets: Pine Terrace, Mowry Avenue, White Birch Terrace, among others. The notices to owners and occupants were mailed on November 7, 2003. A Public Hearing Notice was delivered to The Argus on November 3, 2003 to be published by November 6, 2003.

**Executive Summary:** The Planning Commission is being asked to consider a Tentative Tract Map [TTM 7479] for the development of, and a Planned District Minor Amendment to, a previously approved Planned District. Approval of TTM 7479 and the Minor Amendment will allow the development of a 10-unit condominium project and its associated site improvements. In general, the site plan and building layout remains consistent with the approved Planned District, except for a change in the architectural character of the residential complex and enhancements as indicated in this report. Staff recommends approval of TTM 7479 and the Minor Amendment, as conditioned.

**Background and Previous Actions:** On March 27, 2001, the City Council approved a General Plan Amendment (GPA) to change the land use designation of the site from Low-Density Residential (5 – 7 units per acre) to Medium-Density Residential (18 – 23 units per acre). The GPA included a description of a 2-story 10-unit condominium building and conceptual site plan for the 0.61-acre site.

On May 14, 2002, the City Council adopted an ordinance approving the Planned District rezoning from R-1-6 Single-Family Residence to Planned District [P-2001-174]. The City Council also certified an accompanying EIR prepared for the project and adopted Findings and a Statement of Overriding Consideration for development of the proposed 10-unit condominium project.

**Project Description:** The applicant requests approval of a Tentative Tract Map [7479] for the development of, and a Planned District Minor Amendment to, a previously approved Planned District. The Tentative Tract Map is consistent with the approved Planned District, and is necessary for the development of 10-unit condominium project. The Planned District Minor Amendment proposes architectural modifications to the previously approved architecture for the 10-unit condominium project as well as the addition of a third story to provide a third bedroom for each of five units located on the second floor. The approved architectural style of the development is proposed to be modified from a Mediterranean derivative style to a contemporary style of architecture. In addition, associated site and landscaping improvements are enhanced. The added third story results in an increase in the total gross floor area for the project from 11,120 square feet to 12,708 square feet.

### **Project Analysis:**

- **Land Use Compatibility/Site Planning:** The project site, an infill site, is triangular in shape, relatively level, with the widest portion facing east along Mowry Avenue, and tapering to a point on the northwest end. The site previously contained an unoccupied house, a wood barn, a metal storage building, a storage canopy, and fruit and nut trees. All structures were demolished for the anticipated project, except for the barn (Santos Barn), which was relocated to Shinn Park. The fruit and nut trees have also been removed. There is an existing paved entry driveway from Mowry Avenue. The rear (northwest portion) of the site is narrow, and medium-density multi-family housing surrounds the site on both sides. Mowry Avenue fronts along the east side of the property and is improved with six lanes, sidewalks, street lighting, and a raised center median.

At the Mowry Avenue frontage, the property is the widest at approximately 200 linear feet. The property narrows sharply further back on the parcel. With this site configuration, the parking is proposed adjacent to Mowry Avenue and the condominium building is proposed towards the northwest portion of the property. Landscaping and enhanced pedestrian walkways are proposed around the site perimeter.

Vehicles would enter the project site from Mowry Avenue via either of two ingress/egress driveways. From these driveways, a "U" shaped parking configuration was designed to allow for 20 parking spaces. Ten spaces in two bays would be covered by structures that would be architecturally consistent with the condominium building.

Pedestrians would access the project site from the Mowry Avenue sidewalk, via an enhanced walkway leading them across the parking area to the sidewalk around the building. From the parking lot, pedestrians would access the sidewalk and proceed to either side of the building along a meandering sidewalk to reach each unit. The sidewalk system would continue along either side of the building to form a continuous access loop around the building.

- **General Plan Conformance:** The existing General Plan land use designation for the project site is Medium Density Residential (18-23 DU/AC). Proposed modifications to the project are consistent with the existing General Plan land use designation for the project site as initially adopted by City Council because the density as proposed remains unchanged and modifications proposed are in keeping with the goals, objectives and policies applicable at the time. The approved Planned District General Plan and Planned District findings are included as an enclosure.
- **Zoning Regulations:** The Planned District Minor Amendment as proposed is consistent with the development standards and exception approved for the Planned District. The Planned District adopted for the project site utilized development standards typical to that of the general R-G Garden Apartment Residence District, similar to existing multi-family projects surrounding the development. The R-G zoning development standards were found appropriate for the proposed project for general conformity and compatibility with the surrounding residential neighborhood. Some exceptions to the R-G zoning standards (building setback and private open space) were found warranted and

approved by City Council, due to the site's unusual lot configuration. In summary, the project was permitted to have reduced interior side yard setbacks and building to parking lot setbacks of 15 feet. In addition, minor encroachments into the side yard setback areas as proposed were permitted for balconies, staircases, patios and utility closets.

- **Inclusionary Housing:** Because the applicant voluntarily agreed to dedicate ten percent or one unit in providing a below market rate unit (Unit E on plans) prior to adoption of the City's Inclusionary Housing Ordinance, and because the project neither involves an increase in density nor requests consideration for any additional exceptions to the general development standards for a multi-family project, the Planned District Minor Amendment is not subject to provisions established subsequent to approval of the Planned District [P-2001-174] of providing at least 15 percent of the project units below market rate (BMR).
- **Parking:** The project as proposed satisfies the minimum parking requirement established in the Fremont Municipal Code in that twenty (20) parking spaces will be provided on site (ten of the spaces covered).
- **Open Space/Landscaping:** As approved the Planned District provides private and common open space areas, which remains relatively unchanged under the proposed Planned District Minor amendment. The amendment proposes the addition of large balconies to units G and F on the new third floor. Each unit on the ground floor contains a private patio of no less than 100 square feet in size with at least one interior dimension of 10 feet. Each unit on the upper floor contains a private balcony of no less than 60 square feet in size with at least one interior dimension of 6 feet; except that units G and F are provided with additional balconies on the third floor. The project applicant indicates that fifty percent of the site is landscaped for common open space as required by the Planned District.

Except for additional hardscape enhancements, the conceptual landscape plan as proposed remains similar to the landscape plan originally approved for the Planned District. The applicant conceptually proposes Raywood Ash as street trees, Crape Myrtle and White Oleander as accent trees, Chinese Pistache and Coast Redwood trees as screening/canopy trees. A variety of shrubs and groundcovers are proposed, which include: Japanese Camellia, Fort Night Lily, Australian Tea Tree, Trailing Gazania, Star Jasmine, Dwarf Periwinkle, among others. Hardscape areas are now enhanced to include special paving treatment to identify pedestrian access connections. Additionally, accented paving strips are proposed at each driveway entrance. Staff will continue to work with the applicant to refine and enhance the landscape plan during the Development Organization review process.

- **Architecture:** As mentioned above, the applicant now proposes a third story to provide a third bedroom for each of the five units located on the second floor and to modify the architectural design to reflect a more contemporary style. The third story only increases the height of the building by four feet, from 32 feet to 36 feet in height, through a combination of reducing floor to ceiling heights and simplification of the roof element (i.e., with the incorporation of mechanical wells). The design of the third story incorporates walls that are sufficiently recessed from lower walls, while allowing the addition of two balconies for Units F and G that are appropriately integrated with the front and side façades. The previous Mediterranean style of the project consisted entirely of stucco exterior walls and Spanish roof tiles, whereas the new contemporary design incorporates a variety of exterior finishes and materials, providing interest as well as compatibility with the character of the surrounding area. The exterior walls now horizontally transition from a cement plaster applied in a smooth finish on the first and second stories to a fiber cement board siding ("Hardiplank") on the third story, providing expression of the building's top portion with a different architectural treatment. The exterior walls also vertically transition from cement plaster in a fine finish to a metal panel material with seams on recessed and balcony walls. A metal trellis at the front façade is proposed in an accent color and metal (aluminum) reveals in a brushed finish are also added on the façades. The roof plan is now simplified, and an appropriate standing seam metal roof is applied. All vinyl windows are proposed in an "Evergreen" color, identical to the accent color proposed for the wood window sills ("Patina Green").

The applicant worked with staff to enhance the contemporary design of the project consistent with design related conditions originally establish for the Planned District. The project architecture is revised to reflect more of a contemporary style, while in keeping with the intent as established by the Planned District, as provided below.

- Identified Below Market Rate (BMR) unit on plans as Unit E.
- Revised pedestrian access connections to be constructed of stamped concrete.
- Revised driveway entries to include 10-foot wide accented paving strip of either scored concrete or pavers.
- Revised roofing material over carports and added concrete surrounds to its supports to be consistent with metal standing seam roof proposed for condominium building and concrete patio screening walls, respectively.
- Added a 100 square foot rear patio for Unit E (BMR unit).
- Added a 60 square foot balcony for Unit J accessed from dining room.
- Revised curved façade elements of front patios at Units F and G to be rectilinear façade elements.
- Revised eave (trim) detail to be more appropriate with a contemporary design.
- Removed window surrounds (similar in appearance to coins) from windows in place of simple wood sill treatment.
- Reconfigured parking lot to allow for servicing access to exterior trash enclosure.

Staff believes that some project refinements are still necessary. For example, refinement is necessary to the proposed color palette. The yellowish color cement plaster color may appear inappropriate and incompatible with other colors proposed. The yellowish color may need to be revised to alternate color, muted, or modified to be less saturated. Other colors should be reevaluated to ensure that they are harmonious with selected body colors. Staff believes, however, that these refinements can be worked out during the Development Organization review process. Conditions are added to ensure that the finish materials and colors applied will enhance the substance and character of the building. Staff recommends that the Planning Commission approve the project and allow staff to work with the applicant to address these concerns.

- **View Impacts:** Staff identified views of the site from the adjacent second floor multi-family residential units. The applicant has worked with staff in siting and orienting the proposed building and tree plantings to mitigate this concern. Views into the project site from Mowry Avenue will remain unchanged. In addition, trees will be located along each property line to provide interest and privacy.

**Circulation/Access Analysis:** Access to the site will be from Mowry Avenue, a fully improved six-lane thoroughfare. Ingress and egress will be limited to only right turns in and out, due to the existing raised median on Mowry Avenue. Residents and visitors coming from south of the project site will have to travel north on Mowry Avenue approximately 550 feet before making a U-turn at the Bonner Avenue intersection. On street parking is not permitted on Mowry Avenue.

A private vehicle access way (PVAW) with a surface parking lot is proposed for on-site resident and emergency/service vehicle circulation. The PVAW loops along the Mowry Avenue frontage, with driveways at the north and south ends of the frontage. A four-foot wide sidewalk is provided along the west side of the PVAW and connects, via a stamped concrete walk, to the existing public sidewalk on Mowry Avenue. The sidewalk is a continuous loop around the building and provides access to the condominium units on the north and south side of the building.

**Street Improvements:** The Mowry Avenue street frontage was improved with pavement, curb, gutter, and sidewalk, under a City public works project. The applicant will install street trees and landscaping within the planter strip. In addition, new driveways shall be installed, the existing driveway shall be removed, and utilities shall be installed or relocated. All improvements within the public right-of-way shall be in accordance with City standards.

**Grading/Topography:** The project site is predominantly flat and currently vacant. The previous home, barn, and shed have been removed or demolished. Site grading plans shall be included with the subdivision improvement plans and reviewed prior to approval of the final map.

**Drainage:** On site storm drainage system is proposed via a series of landscape area drains, underground storm drains, and catch basin inlets in the parking lot. The on site system connects to the public storm drain in Mowry Avenue. The developer must extend the existing public storm drain main and install a new manhole in Mowry Avenue in order to connect the private system to the public system.

On the tentative tract map, the Project Land Surveyor has shown a proposed 1% (minimum) pavement slope and valley gutter in the "typical PVAW section A." In order to provide positive surface drainage, staff recommends that a minimum 2% pavement slope be provided. Staff also recommends that the valley gutter design, proposed within the 4 standard parking stalls, be revised to be a standard curb and gutter. This valley gutter location coincides with a parked vehicle's front wheels and may present a problem when vehicles are parked during rain events. Staff feels that the pavement slopes can be revised to eliminate the valley gutter. The storm drain design presented on the tentative map is conceptual and is not approved at this time. The project storm drainage system is subject to review and approval of the City Engineer prior to final map approval.

**Urban Runoff Clean Water Program:** The Federal Clean Water Act of 1972 and Water Quality Act (1987) require localities throughout the nation to obtain a National Pollutant Discharge Elimination System permit (NPDES) in order to discharge storm water into public waterways such as creeks, rivers, channels and bays. The applicant will comply with the City's Urban Runoff Clean Water Program in accordance with the NPDES requirements issued by the State's Water Quality Control Board.

**Geologic Hazards:** The site proposed for development is located within the Alquist-Priolo Special Study Zone, as delineated on the State of California Earthquake Fault Zone Map, Niles Quadrangle R80. According to the Alquist-Priolo Earthquake Fault Zoning Act, Section 2623(a), the City shall require, prior to the approval of a project, a geologic report defining and delineating any hazard of surface fault rupture. The project applicant has submitted a report by Geotechnical Engineering Inc., dated June 14, 2000. The Project Geotechnical Engineer and the City's geotechnical consultant agreed that trenching of the project site was not warranted due to existing data collected in previous investigations.

The City and owner applied for a waiver from the State Geologist, because no subsurface geologic data was collected from the project site. The State Geologist approved the waiver on April 26, 2001. The City has submitted one copy of the approved geotechnical report to the State Geologist, as required by the Alquist-Priolo Earthquake Fault Zoning Act. The approved geologic report concludes the property is appropriate for the development as proposed

**Waste Management:** This project involves development of a 10-unit condominium project that is subject to the provisions of the California Integrated Waste Management Act of 1989 (AB939). The Act requires that 50% of the waste generated in the City of Fremont be diverted from landfill sites by the year 2000. Additionally, the project is subject to the City's Source Reduction and Recycling Element (1992), an Integrated Waste Management Ordinance (1995), and a Commercial/Industrial Recycling Plan (1997). These documents require that any new project for which a building permit application is submitted to include adequate, accessible, and convenient areas for collecting and loading trash and recyclable materials. The trash/recycling enclosure for the project is designed in a manner to be architecturally compatible with the proposed development in accordance with such standards.

**Environmental Analysis:** An Environmental Impact Report (EIR) has been previously prepared for this project. Because no new impacts are identified, no further environmental review is necessary. The environmental analysis identifies concerns regarding potential impacts to Air Quality, Cultural Resources, Geology/Soils, Noise, and Transportation/Traffic. The EIR includes mitigation measures, which, if implemented, would reduce the identified impacts to non-significant levels. However, the relocation of the on-site farm complex resulted in a significant unavoidable impact on historic resources. A more detailed description of identified impacts on historic resources (i.e., the barn relocation), staff analysis, and the MMRP can be found within the certified EIR for the project on file at the Development and Environmental Services Department at 39550 Liberty Street, Fremont, CA, 94537, or available for the Planning Commission if requested prior to the scheduled hearing. Several mitigation measures for the project are also contained within the EIR and incorporated as conditions of approval. Approval of the Planned District resulted in the adoption findings of overriding consideration.

The EIR conducted for the project has also evaluated the potential for this project to cause an adverse effect -- either individually or cumulatively -- on wildlife resources. There is no evidence the proposed project would have any potential for adverse effect on wildlife resources. Based on this finding, a Certificate of Fee Exemption was submitted with the Notice of Determination after the Planned District's adoption, as required by Public Resources Code section 21089. The Certificate of Fee Exemption allows the project to be exempted from the review fee and environmental review by the California Department of Fish and Game. A copy of the Exemption is also on file at the Development and Environmental Services Center.

The applicant will be required to adhere to all outstanding Mitigation Monitoring Reporting Plan (MMRP) measures prepared at the time of the EIR's certification for project development.

**Response from Agencies and Organizations:** None

**Enclosures:** Exhibit "A" (Site Plan, Elevations, Floor Plans, Conceptual Landscape Plan, Vicinity Map)  
Exhibit "C" (Color and Material Board)

**Exhibits:** Exhibit "A" (Site Plan, Elevations, Floor Plans, Preliminary Landscape Plan, and Vicinity Map)  
Exhibit "B" (First Amendment to Conditions of Approval)  
Exhibit "C" (Color and Material Board)  
Exhibit "D" (Tentative Tract Map)  
Exhibit "E" (Findings and Conditions of Approval for Tentative Tract Map)

**Informational Enclosures:** Informational 1 (Findings and Conditions Approved for Planned District PLN2001-00174)  
Informational 2 (Originally Approved Architecture Plans)

**Recommended Actions:**

1. Hold public hearing.
2. Find Planned District Minor Amendment PLN2003-00253 results in no additional environmental impacts as identified under CEQA and that the previous certified Environmental Impact Report is still appropriate for this revised project and that no further review is required.
3. Find Planned District Minor Amendment PLN2003-00253 is still in conformance with the relevant provisions contained in the City's existing General Plan attached thereto as Informational 1 in the staff report provided to the City Council on April 9, 2002. These provisions include the designations, goals and policies set forth in the General Plan's Land Use and Housing Chapters as enumerated within the staff report.
4. Approve Planned District Minor Amendment PLN2003-00253, as shown on Exhibit "A", subject to conditions on Exhibit "B".

**And**

5. Find Tentative Tract Map 7479 to be in conformance with the relevant provisions contained in the City's existing General Plan. These provisions include the designations, goals, objectives and policies set forth in the General Plan's Land Use and Housing elements.
6. Find that Tentative Tract Map 7479 fulfills the intent of the applicable requirements set forth in the Fremont Municipal Code.
7. Approve Tentative Tract Map 7479, as shown on Exhibit "D", based upon the findings and subject to the conditions of approval set forth in Exhibit "E".



EXHIBIT "B"  
PLN2003-00253  
First Amendment to Planned District P-2001-174  
Mowry Avenue Condominiums at 1481 Mowry Avenue (APN# 501-1560-007-05)  
Planning Commission Hearing on November 20, 2003

**General Conditions**

1. Approval of Planned District Minor Amendment PLN2003-00253 for architectural modifications and the addition of a third story to the multi-family residential building shall conform to Exhibit "A" (Site Plan, Elevations, Floor Plans, Preliminary Landscape Plan, and Master Site Plan) and all conditions contained in Planned District PLN2001-00174 adopted by City Council, except as amended (or deleted) herein by the condition below.
2. Any modification to the Planned District Minor Amendment shall be subject to review and approval of the Assistant City Manager if such modifications are in keeping with the intent of the original approval, unless the Assistant City Manager finds that such modification warrants review and approval by the Planning Commission.
3. Exhibit "A" (Site plan, Elevations, and Conceptual Landscape Plans) and Exhibit "C" (Color and Material Board) approved by City Council under Planned District PLN2001-00174 are superseded by Exhibit "A" (Site Plan, Elevations, Floor Plans, Preliminary Landscape Plan, and Vicinity Map) and Exhibit "C" (Color and Material Board) of this report dated November 20, 2003. In addition, the following conditions approved by City Council on May 14, 2002 under Planned District PLN2001-00174 Exhibit "D" are considered satisfied, no longer applicable, or amended (underlined in "bold"), due to incorporation of such conditions and/or modifications to the project:

- ~~A-1 — Approval of this Planned District (PLN 2001-00174) shall be effective only after compliance with the requirements of Public Resources Code Section 21089, pertaining to payment of fees to the California Department of Fish and Game. All mitigation measures included in the initial study and included here as conditions of approval shall be complied with.~~
- ~~A-2 — The project shall conform with Exhibit "B" (Preliminary and Precise Site Plan, Floor Plans, Elevations, and Landscape Plan) and "C" (Color and Material Board), and all conditions of approval set forth herein. The maximum number of multi-family units shall not exceed 10 residences.~~
- ~~A-8 — The Barn structure shall be adequately braced and moved to Shinn Historic Park and placed on blocks, subject to review and approval of the Engineering Division.~~

**Site Planning**

- ~~B-2 — Unless modified by the Planning Commission or the City Council, the condominium building and units shall be in accordance with what has been indicated on the Site Plan included as Exhibit "B".~~
- ~~B-3 — Pedestrian access shall be direct from the Mowry Avenue public sidewalk. Pedestrian amenities shall include a 4-foot wide concrete sidewalk, 24-inch box size specimen street trees, site lighting, and a special landscape entry wall. **Details of all landscape wall elements shall be provided on plans prior to issuance of building permit, subject to the review and approval of Development Organization staff.**~~
- ~~B-4 — The pedestrian access connections to the public street are identified with special paving treatment crossing the parking drive aisle. This walk way shall be scored concrete with pattern to match that identified in Landscape Plan (Exhibit "B").~~

~~B-5 The applicant shall provide a 10-foot wide accent paving strip at each entrance along Mowry Avenue. Accent paving may be either scored concrete, stamped concrete, or pavers.~~

### **Building Design**

~~C-1 Require salvage of building demolition materials for reuse in other local historic structures or for recycling purposes prior to obtaining demolition permits.~~

~~C-2 Proposed vinyl single hung windows on all new buildings shall be of a color matching the building color palette (body or trim).~~

~~C-3 The color scheme shall be generally in conformance with that proposed in Exhibit "C", unless otherwise modified.~~

~~C-6 The proposed window framing and garage door colors shall match the body color of each house, as feasible, and not be white or a contrasting color. Window glazing shall be clear and not noticeably tinted. The window details shall be subject to staff review and approval during the Development Organization review process.~~

~~C-7 The stucco siding finish and trim shall compliment the architecture and be subject to staff approval during the Development Organization review process.~~

~~C-12 All entry, patio and balcony doors shall be of wood construction.~~

~~C-13 The precast window and door frames and trim shall be an integral tan color. All windows and doors shall be a color matching the precast tan color as proposed, and not be white or a contrasting color.~~

~~C-14 The detached covered parking structures are designed with 6-inch square steel support columns and pitched roof to match the condominium building which shall be improved with an appropriate dimension and design of the support columns to compliment the architectural style of the condominium building.~~

~~C-15 A trash/recycle enclosure shall be required for the proposed project. The only available location is immediately adjacent or attached to the easterly covered parking, near the northeast corner of the building. Due to the close proximity to the first floor bay window of the building, the trash enclosure shall be masonry with stucco finish and color to match the proposed building. A landscape trellis shall be placed on the enclosure wall facing the bay window and shall extend over the enclosure. Vine plantings shall be planted in this location.~~

### **Landscaping**

~~D-1 The complete arborist report shall be reviewed and approved by the City's Landscape Architect to determine if any significant trees require preservation, relocation, or protection during site development to ensure their preservation and long-term health.~~

### **Engineering**

~~E-1 A tentative tract map and private street application shall be submitted for Planning Commission review and approval, and may be subject to modifications at the time of review.~~

### **Conditions to be Complied With Prior To Occupancy**

~~G-3 The project applicant shall guarantee the required on-site improvements and notice each new home owner that the PVAW will provide access to the adjacent property at the time of its future development.~~

**All conditions not specifically deleted or amended above from PLN2001-00174 Exhibit "D" approved on May 14, 2002 by the City Council must be satisfied on an ongoing basis or whenever applicable (i.e., prior to approval of building permit, during construction or prior to occupancy)**

**Prior to Issuance of Building Permit (Added Conditions):**

**Planning**

4. The applicant shall work with staff on the final color palette for the proposed development during the Development Organization review process. All colors will be evaluated to ensure that they are harmonious with each other and consistent with the proposed contemporary design. Color contrast, however, is encouraged to express architectural details.
5. The applicant shall continue to work with staff during the Development Organization review process to further enhance and refine the landscaping and hardscape plan, including details of any landscaping low wall elements used to screen the front parking lot area along Mowry Avenue.

**EXHIBIT "E"**  
**PLN2003-00253**  
**(Tentative Tract Map)**  
**Mowry Avenue Apartments at 1481 Mowry Avenue (APN# 501-1560-007-05)**  
**Planning Commission Hearing on November 20, 2003**

**FINDINGS:**

The findings below are made on the basis of information contained in the staff report to the Planning Commission dated November 20, 2003, incorporated hereby.

1. The proposed map satisfies the requirements and conditions imposed by the Subdivision Map Act and the City of Fremont Subdivision Ordinance, because the procedural requirements of the Map Act are being followed and the proposed lots conform to the standards approved for Planned District P-2001-174.
2. The proposed subdivision, together with the provisions of its design and improvement, is consistent with the General Plan, because the proposed development conforms to the requirements of the Planned District zoning district as well as the General Plan land use designation of Medium Density Residential (18/23 DU/AC) for the site.
3. The site is physically suitable for the type and proposed density of the development, because it is consistent with the General Plan and zoning designations for the site.
4. The design of the subdivision and the proposed improvements are not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat, because of the design and location (infill) of the development.
5. The design of the subdivision and the type of improvements are not likely to cause serious public health problems, because the review process of the subdivision has taken those concerns into consideration and has found the proposal in conformance with the City of Fremont's policies.
6. The design of the subdivision and the type of improvements will not conflict with any easements required for the public at large for utilities or access within the proposed subdivision.

**TENTATIVE TRACT MAP CONDITIONS OF APPROVAL:**

1. The project shall conform with Exhibit "D" (Tentative Map Tract 7479), all conditions of approval set forth herein, and all conditions of approval of Planned District P-2001-174, except where modified by Exhibit "B" of PLN2003-00253.
2. The final map and subdivision improvement plans shall be submitted to the Engineering Division Organization for review to insure conformance with the Subdivision Ordinance, relevant codes, policies, and other requirements of the Fremont Municipal Code.
3. The developer shall dedicate a public service easement (P.S.E.) along the Mowry Avenue frontage and install complete street improvements to the centerline of Mowry Avenue across the project frontage in accordance with the Subdivision Ordinance. Street improvements include, but are not limited to, installation of street trees, landscaping, irrigation, and storm drains; removal and installation of driveways; and relocation of existing utilities.
4. Construction activities within the Mowry Avenue right-of-way shall be limited to the following hours of operation:
  - 9 a.m. to 4 p.m. Monday through Friday

- No construction on Saturday and Sunday

On site construction hours shall be limited as provided in the conditions of Planned District P-2001-174.

5. The streetlight plan and joint trench plan shall be submitted by the applicant with the first plan check for the final map and subdivision improvement plans. The final streetlight plan and joint trench plan shall be completed prior to final map approval.
6. The developer shall request that P.G.&E. commence with the design of the utility underground work for the proposed development after the Planning Commissions approval of Tentative Tract Map 7479.
7. Precise geometry and location of all driveways shall be subject to approval of the City Engineer.
8. Prior to the issuance of any permit for vertical construction, the applicant shall provide a roadway access to the site with an all-weather surface and water supply with a minimum flowrate of 1,000 gallons per minute, or fire protection services acceptable to the Fremont Fire Department.
9. In accordance with Section 66474.9(b) of the Subdivision Map Act, the subdivider shall defend, indemnify, and hold harmless the City of Fremont or its agents, officers, or employees from any claim, action, or proceeding against the City of Fremont or its agents, officers, or employees to attack, set aside, void, or annul, an approval of the City of Fremont, advisory agency, appeal board, or legislative body concerning a subdivision, which action is brought within the time period provided for in Section 66499.37 of the Government Code.
10. The City of Fremont shall promptly notify the applicant of any claim, action, or proceeding to attack, set aside, void, or annul, its approval and shall cooperate fully in the defense thereof.
11. Pursuant to Chapter 9, Title VIII of the Fremont Municipal Code, a park dedication in lieu fee is required for the residential units in the proposed development. The fee per unit shall be as set forth in the City's Master Fee Resolution in effect at the time the final map is filed with the City Engineer for approval and all tentative map conditions of approval have been satisfied. The park dedication in lieu fee will be collected prior to issuance of the building permit for each residential unit.
12. All new utility service connections, including electrical and communications, shall be installed underground.
13. The project plans shall identify Best Management Practices (BMPs) appropriate to the uses conducted on-site to effectively prohibit the entry of pollutants into storm water runoff. The plans will also include storm water measures for operation and maintenance of the project.
14. The developer is responsible for ensuring that all contractors and subcontractors are aware of all storm water quality measures and implement such measures. Failure to comply with the approved construction Best Management Practices will result in the issuance of correction notices, citations, or stop orders.
15. All public and private storm drain inlets are to be stenciled "No Dumping – Drains to Bay" using thermoplastic stencils purchased from the City of Fremont Maintenance Division.
16. The Home Owner's Association (HOA) is to periodically provide educational materials on storm water pollution prevention (as furnished by the City) to all members.
17. The developer, at time of initial sale, shall provide to the buyer information on good housekeeping of hazardous products, i.e. proper use and disposal, prohibited discharge practices, etc. Informational materials will be furnished by the City.
18. A Home Owner's Association (HOA) or any other mechanism acceptable to the City is to be established, formed, and is to covenant and be responsible for the maintenance of all commonly owned facilities, which are not

maintained by the public utility agency. The maintenance responsibility includes, but is not limited to, maintenance work resulting from backfill failure and maintenance of private vehicle access ways. The developer is responsible for maintenance for all facilities during the warranty period.

19. The private vehicle access way street name shown on the Tentative Map Tract 7479 (Exhibit "D") is subject to modification prior to final map approval. If needed, the developer shall work with staff to provide different street names during the final map and subdivision improvement plan check process.
20. A private vehicle access way (PVAW) and a Public Utility Easement (PUE) are to be established over the entire PVAW right-of-way. The PUE dedication statement on the final map is to recite that the PUE is available for, but not limited to, the installation, access and maintenance of sanitary and storm sewers, water, electrical and communication facilities.
21. Access considerations for the on-site circulation system require space to be reserved for the movement of fire-fighting and emergency vehicles for the protection of both private property and the public. Dedication of emergency vehicle access easements (EVAE) on the final map will be required. The easement geometry shall be subject to the approval of the City Engineer.
22. Fire hydrants are to be located within the project site or along Mowry Avenue as determined by the Fremont Fire Department.
23. Deed restrictions are to be recorded concurrently with the final map to create a mandatory Home Owner's Association or any other mechanism acceptable to the City for this condominium project which is to covenant and be responsible for the following:
  - a. Maintenance of the facilities in the private vehicle access way which are not maintained by a public utility agency, except all utility work resulting from backfill failure is to be the responsibility of the Home Owner's Association.
  - b. Payment of the water and private vehicle access way lighting (maintenance and energy) bills.
  - c. Maintenance, repair, replacement and removal of blockages in all building sewers. Maintenance of the building sewers includes repair of any trench failures and/or trench surface material failures.
  - d. Maintenance and "knock-down" repair of fire hydrants and water facilities along the private vehicle access way (PVAW) is to be done by the utility agency at the expense of the Home Owner's Association. The Home Owner's Association is to be responsible for repainting any fire hydrants along the PVAW.
24. Each buyer is to sign an acknowledgment that he/she has read the constitution and bylaws of the Home Owner's Association and the conditions, covenants and restrictions applying to the development.
25. Private vehicle access way grading and drainage shall be done according to public street standards, subject to review and approval by the City Engineer prior to final map approval.
26. Pursuant to FMC Section 8-1522 and 8-3107, the subdivider is to improve prior to final map approval or agree to improve within one year of final map approval, the PVAW frontage of the map. No permanent improvement work is to commence until improvement plans and profiles have been approved by the City Engineer. Improvements are to be installed to permanent line and grade in accordance with the City's subdivision improvement standards and to the satisfaction of the City Engineer. The minimum improvements which the subdivider is normally required to construct or agree to construct prior to acceptance and approval of the final map by the City are as set forth in the City Development Policy for Private Vehicle Access ways. Improvements to be constructed include:
  - a. Curb and gutter

- b. Driveways
  - c. Street paving
  - d. Private Street monuments
  - e. Electroliers (wired underground)
  - f. Drainage facilities
  - g. Signs
  - h. Fire hydrants
27. The private vehicle access way pavement shall be designed on the basis of a traffic index using predicted traffic generation and a twenty year pavement design life. In no case shall the traffic index be less than 5.5. Asphalt concrete surfacing to be treated with a seal coat of the type and amount required by the City Engineer. Pavement design sections shall be subject to approval of the City Engineer.
  28. Safety lighting is to be provided on the private vehicle access way. Lights shall utilize "vandal resistant" enclosures and shall have sufficient power and spacing to provide an average maintained foot-candle level of 0.12.
  29. A signpost, to which is attached a sign having an area of at least fifteen inches by twenty-one inches, is to be installed at or near the private vehicle access way (PVAW) entrances. The name of the PVAW is to be placed on this sign in clearly legible four-inch letters. The sign is to have painted, in at least one-inch letters, "Private property. Not dedicated for public use."
  30. The PVAW shall be posted for total parking prohibition within the PVAW right-of-way, except in areas designated as and approved for parking.
  31. The developer shall provide for a functional drainage system subject to approval of the City Engineer.
  32. Site grading shall not obstruct natural flow from abutting properties or divert drainage from its natural watershed.
  33. Proposed curb elevations for the street system shall not be less than 1.25 feet above the hydraulic grade line (design water surface) and at no point should the curb grade be below the energy grade line. On-site grades are to be a minimum of 0.75 feet above the hydraulic grade line.
  34. The applicant shall provide for a functional system to control erosion and siltation during and after construction subject to review and approval by the City Engineer. An erosion and sediment control plan shall be included in the subdivision improvement plans for this purpose.
  35. All cut and fill slopes shall be constructed to a maximum of three horizontal to one vertical (3:1).
  36. The applicant shall submit a detailed soils report including recommendations regarding structural sections, prepared by a qualified soils engineer registered by the State of California.
  37. Grading operations shall be in accordance with recommendations contained in the required soils report and be supervised by an engineer registered in the State of California to do such work. City staff will assume inspection responsibility for street grading at a point six inches below planned subgrade.

38. A disposal site for the off-site haul dirt materials or source for the import fill shall be approved by the City prior to the approval of the grading permit. The off-site haul route for the excess dirt or import fill shall be subject to the approval of the City Engineer.
39. The minimum drainage slope in natural swales shall be 1.5%. Deviation from this requirement shall be subject to review and approval of the City Engineer prior to final map approval.
40. The developer shall adhere to the recommendations in the Geotechnical Engineering Inc. report entitled "Updated Report, Soil and Geologic Investigations, Proposed Residential Development, City Center Estate, 1481 Mowry Avenue, Fremont, California," dated June 14, 2000, and any additional or supplementary geotechnical recommendations.

**SUBDIVIDER PLEASE NOTE:**

The fees, dedications, reservations and/or other exactions imposed on this project are those listed in the foregoing conditions of this tentative tract map approval. The subdivider is hereby notified that the 90-day period in which the subdivider may protest these fees, dedications, reservations and other exactions pursuant to Government Code Section 66020(a) begins on the date of approval of this tentative tract map. If the subdivider fails to file a protest within this 90-day period complying with all the requirements of Government Code Section 66020, the subdivider will be legally barred from later challenging such actions.